

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 457 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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PANOLI GROUP COOPERATIVE MULTIPURPOSE SOCIETY LTD.

Versus

NADURGA AGENCY THROUGH ITS PARTNERS

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Appearance:

1. Appeal from Order No. 457 of 1995  
MR BS PATEL for Petitioner No. 1  
..... for Respondent No. 1  
MR JS YADAV for Respondent No. 1/1-1/3
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 10/09/2001

ORAL JUDGEMENT

1. The appellant - plaintiff is a society. It had filed Regular civil Suit No.190 of 1989 against the defendant Navdurga Agency for recovering the amount of

Rs.1,79,000/- before the Court of learned Civil Judge (SD), Bharuch. Issues were framed on 16.3.1992. Thereafter the list of witnesses were submitted on 9.4.1992. From the papers shown to me by learned Counsel Shri Yadav for the respondent - original defendants it appears that the matter was adjourned before the learned trial Judge from time to time and ultimately the Suit was dismissed on 3.12.1993 in absence of the plaintiff and his Advocate under the provision of Order : 9 Rule : 8 of the Code of Civil Procedure.

2. Application for restoration of the Suit was required to be filed within 30 days. Thus, the plaintiff was required to file Restoration Application on or before 2.1.1994. Instead of that the restoration Application was filed on 22.2.1994 by the plaintiff before the trial Judge praying for condoning the delay of 50 days in filing the same late and to restore the main Suit which was dismissed for default under the provisions of Order : 9 Rule : 8 C.P.C. on the ground that the plaintiff could not remain present before the Court because the plaintiff was not feeling well and his Advocate was out of station all of a sudden. It is also averred in the application for restoration and condonation of delay that talk of compromise was going on between the parties. No one remained present on the day on which the matter was kept for hearing before the trial Court.

3. The learned Judge by the impugned order dated 25.10.1994 dismissed the restoration Application, as according to him the plaintiff was required to explain the delay and it had failed to explain the delay of 80 days. Therefore the Application was dismissed. The said order passed by the learned Judge has been challenged in this Appeal. Learned Counsel Shri Pushpadatt Vyas for Shri B.S.Patel for the appellant - Society vehemently submitted that the learned Judge has rejected their application Ex.1 for restoration of Suit on the ground that the plaintiff failed to explain the delay of 80 days. He submitted that the sufficient cause was made out for restoration of the Suit, however, the same was not accepted by the learned Judge.

4. He submitted that the learned Judge was empowered to dismiss the Suit of the plaintiff in absence of the plaintiff and his Counsel, but when sufficient cause is made out then the learned Judge should have restored the Suit after condoning the delay in filing the Restoration Application.

5. However, learned Counsel Shri Yadav for the

respondent vehemently submitted that looking to the conduct of the plaintiff and their Counsel the Suit is not required to be restored. He further submitted that the learned Judge was fully justified in dismissing the Suit and the Application for restoration because the delay was not properly explained.

6. From the impugned order of dismissal of the Suit on 3.12.1993 which is placed on record by Shri Yadav, it appears that on number of occasion the Suit was adjourned from time to time after the issues were framed and list of witnesses were submitted and when nobody was present the learned Judge has dismissed the Suit on 3.12.1993 under the provisions of Order : 9, Rule : 8 C.P.C.

7. It appears from the impugned order dated 25.10.1994 passed by the trial Judge below Ex.1 in Civil Misc. Application NO.10 of 1994, the learned Judge dismissed the Suit as according to the learned Judge the plaintiff was negligent and it had not properly explained the delay.

8. It is true that whenever there is delay in filing the application the parties must explain the delay by offering reasonable ground. At the same time the Court should keep in mind that substantial justice is to be done and merely on technical ground the learned Judge can not dismiss the matter. It is also true that almost six years time has been consumed in finally disposing of the matter. However, the plaintiff is a society which had filed Suit against the defendant for recovery of Rs.1,79,000/- and according to the plaintiff when the talk for settlement was going on between the parties the Suit was dismissed and therefore the plaintiff Society suffered heavy loss. In my considered opinion the learned Judge would have restored the Suit after awarding cost to the defendant. The approach of the learned Judge in not condoning the delay is not at all proper.

9. In view of the above discussion, this Appeal is allowed. The impugned order dated 2.12.1993 passed by the learned Civil Judge (SD), Bharuch is quashed and set aside. The restoration Application is also allowed and the impugned order dated 25.10.1994 is also quashed and set aside and the Civil Suit No.190/89 is ordered to be restored on appellant depositing Rs.1000/as cost within one month from today.

sd/-

Date : September 10, 2001 (B.J.Shethna, J.)

\*sas\*

